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Re: Application of: Rogers
Serial No.: 10/035,464
Filed: December 31, 2001
For: System and Method for Securing Transactional Data
Transmitted Over a Wireless Network in a Retail
Store Environment
Group Art Unit: 3621
Confirmation No. 4003
Examiner: Calvin L. Hewitt, II
MMB Docket No.: 1001-0773
NCR Docket No. 9973

TRANSMITTAL OF REPLY BRIEF

Please find for filing in connection with the above patent application the following documents:

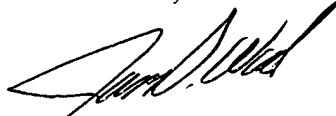
1. Reply Brief (8 pages);
2. One (1) return post card.

Commissioner for Patents
May 22, 2006
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Applicants believe no fee is required for filing of this Reply. However, please charge any fee deficiency or credit any overpayment to Deposit Account No. 13-0014.

Respectfully Submitted,

MAGINOT, MOORE & BECK



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May 22, 2006

Enclosures



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

A. **IDENTIFICATION PAGE**

NCR Docket No. 9973

MMB Docket No. 1001-0773

Application of: **Rogers**

Group Art Unit: **3621**

Serial No. **10/035,464**

Examiner: **Calvin L. Hewitt, II**

Filed: **December 31, 2001**

For: **System and Method for Securing Transactional Data Transmitted Over a
Wireless Network in a Retail Store Environment**

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REPLY BRIEF

Mail Stop Appeal Brief - Patents
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P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a reply submitted in response to the Examiner's Answer dated April 21,
2006.

B. STATUS OF THE CLAIMS

Claims 1-25 are pending in the application.

Claims 1-20 are finally rejected.

Claims 21-25 were withdrawn from consideration by the Examiner.

Claims 1-25 are being appealed, and are shown in the Appendix attached to the Amended Appeal Brief.

C. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 21-25 were not considered by the Examiner as allegedly being drawn to an invention distinct from the invention of claims 1-20.

Claims 1-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over International Publication No. WO200046959 to Nordenstam et al. (hereinafter “Nordenstam”) in view of U.S. Patent No. 4,262,359 to Cory et al. (hereinafter “Cory”) and U.S. Patent No. 6,502,135 to Munger et al. (hereinafter “Munger”).

D. Argument

The arguments set forth in the Amended Appeal Brief still apply. Furthermore, the Applicant respectfully submits that contrary to the Examiner's assertion, the Applicant has not misrepresented the teachings of Cory.¹ Additionally, the new arguments presented by the Examiner should not be adopted by the Board.

1. Existence of Inventions is Reviewable

The decision by an examiner to exercise discretion in requiring a restriction is not a matter of appeal. Rather, the proper recourse is to petition the Director. The *existence* of two inventions so as to empower an examiner with the ability to require a restriction, however, is a matter of fact which, as set forth in the Amended Appeal Brief, is reviewable *de novo*.

2. The Teaching of Cory

The Examiner has alleged that the Applicant has provided "a gross, and intentional, misreading of the Cory et al. patent." (Examiner's Answer at page 5). Contrary to the Examiner's allegation, the teaching of Cory has been properly presented by the Applicant.

The Examiner has not identified the manner in which the Applicant has allegedly misread Cory, however, he states that "the background of the invention of Cory et al. do not require continuous transmission of dummy messages only (sic) to insert these messages in between 'real ones'." (Examiner's Answer at page 6). Thus, the Examiner

¹ The Examiner has cited to the Applicant's originally filed Appeal Brief and not the Amended Appeal Brief. Citations made herein will be to the Amended Appeal Brief.

appears to have construed the Amended Appeal Brief as claiming that Cory continuously transmits dummy messages.

The Applicant, however, has cited to the actual specification of Cory for the proposition that “the transmitter of Cory is continuously transmitting, regardless of the availability of valid data or any conditions on the transmission line.” (Amended Appeal Brief at page 17). The Applicant then summarizes the teaching of Cory as “hiding actual data by continuously transmitting data, either real data or dummy data.” The discussion of Cory thus cannot be reasonably construed to be a representation that *dummy messages* are *continuously* transmitted. Rather, the discussion of Cory in the Amended Appeal Brief is true to the teaching of Cory which is a system wherein “only valid traffic is printed at the receive terminal, although a constant flow of traffic appears on the transmission system.” (Cory at column 1, lines 30-32).

Therefore, the arguments set forth in the Amended Appeal Brief still apply.

3. “Not Starting” is Not the Same as “Terminating”

The Examiner has correctly identified the fact that the prior art teaches generation of bogus messages “when the system is idle.” (Examiner’s Answer at page 9). A system designed to start messages at certain times based upon an algorithm does not teach, disclose or suggest the limitations set forth in claim 4.

Specifically, the Examiner states that the generation of a bogus message when an idle time is sensed “implies” that the message is thereafter terminated if an actual transaction occurs. (Examiner’s Answer at page 9). The Examiner then alleges that any position taken to the contrary “ignores the clear teaching of Cory et al. and Munger.”

(Examiner's Answer at page 9). An accurate reading of Cory and Munger, however, destroys the Examiner's argument.

As set forth in the Amended Appeal Brief at page 17, Cory teaches that "[i]n the event there is no data, a "V" generator 58 is activated and a series of five characters or dummy data is transmitted in the form of five "V"s. (Cory at column 4, lines 15-19). At the completion of transmitting the fifth dummy data character, the system once again determines whether or not any valid data is available for transmission and repeats the sending of five characters (dummy data) if there is no valid data. (Id. at column 4, lines 21-24)."

Therefore, even if a message arrives as the system of Cory is transmitting the second "V", the transmission of bogus letters is not terminated. Rather, the transmission continues until all of the "Vs" are sent. Thus, the teaching of Cory that a message is *not terminated* until all five "Vs" are transmitted regardless of the availability of actual data during the bogus generation sequence cannot reasonably be construed to imply that the transmission of "Vs" is *terminated* if an actual transaction occurs while the "Vs" are being transmitted.

Munger merely states that a bogus message may be started when a terminal is idle. (Munger at column 12, lines 26-30). Identifying the predicates for initiating a process, however, is not the same as identifying the predicates for termination of a process.

Accordingly, both Cory and Munger merely identify predicates for initiating a bogus message generation sequence and only Cory discloses how the sequence is

terminated, by the completion of the sequence. Thus, claim 4 is patentable over the cited art as discussed in the Amended Appeal Brief.

4. Termination of Messages Is Not Inherently Based Upon a Timer

The Examiner surmises that because Munger discloses the generation of bogus messages based upon a time of day, a bogus message timer for terminating the generation of bogus messages is necessarily disclosed. (Examiner's Answer at page 13).

Termination of bogus message generation is not inherently based upon a timer.

Specifically, the Examiner has determined that without a timer, "the messages would be generated around the clock and there would be (sic "no") need for an initiation of bogus message creation based on a time of day. (Examiner's Answer at page 13).

Cory teaches, however, that bogus message generation continues for a discreet volume of traffic, i.e., five letters. (Cory at column 4, lines 15-24). The bogus message generation then terminates, because of the *number* of messages transmitted, not because of a timer.

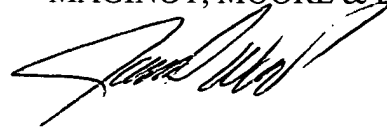
Therefore the use of a timer is not inherently required to terminate the generation of bogus messages.

5. Conclusion

For the reasons set forth in the Amended Appeal Brief and for the reasons set forth above, claims 1-20 stand are not unpatentable over Nordenstam in view of Cory and Munger. Accordingly, the Board of Appeals is respectfully requested to reverse the rejections of claims 1-20 the withdrawal by the Examiner of claims 21-25.

Respectfully submitted,

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May 22, 2006

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